

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

FAO 36/2025 c/w
CCP(S) 378/2025
CM(M) No. 540/2025

MOHAMMAD AKRAM GANIE

...Appellant/petitioner

Through: Mr. Saqib Amin Parray, Advocate

Vs.

ABDUL REHMAN GANIE

...Respondent(s)

Through: Mr. Mujeeb Indrabi, Advocate in FAO no. 36/2025
Mr. Saif Ul Islam, Advocate in CM(M) no. 540/2025

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

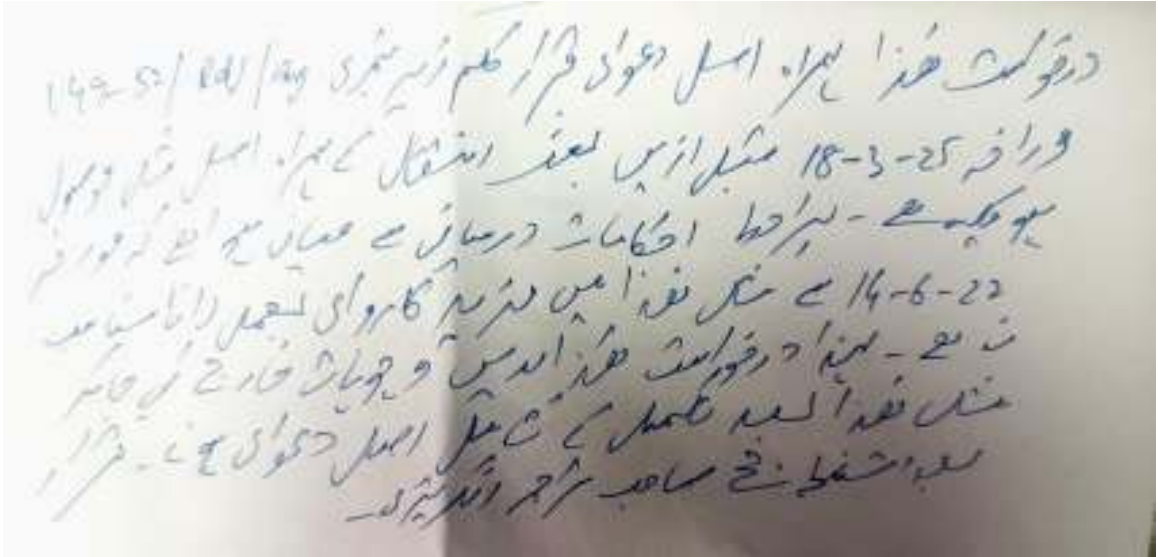
ORDER
23.12.2025

At request of learned counsel for the petitioner appearing in CM(M) no. 540/2025 which is listed at Serial no. 71 in the Regular Cause List before this Bench is taken up along with the instant petition and is taken up for final disposal along with the aforesaid appeal.

Order dated 15.07.2025, passed by Additional District and Sessions Judge, Anantnag, in case titled Mst. Nigeena and another v. Ab. Rehman Ganie, is under challenge in aforesaid petition and the said order has been passed in an application which was filed along with the suit under Order 39 Rule 1 and 2. Initially the Trial court on 27.01.2022, passed the following order:

“...Heard counsel for the applicants. Perusal of plaint, application for grant of temporary injunction application and the material available on record along with affidavit thereto I am of the view that subject to the response of non-applicants, the applicant has been able to prima facie put forth few questions of law and fact which need adjudication by this court. Issue notice to other side for filing objections. In the meanwhile, till objections are filed and considered the non-applicants/defendants are directed not create any third-party interest with respect to suit property and not to change the nature of the suit land. However, the non-applicants are at liberty to apply for cancellation, modification or discharge of the order even before the next date of hearing. The plaintiff is directed to serve the copy of this order along with copy of plaint to the defendants and subsequently file service affidavit before this court.

During the pendency of the suit, petitioner herein was transposed from defendant and was allowed to contest the suit as plaintiff. While the suit was pending, subsequently, it was transferred to the court of Additional District



It is clear from the order impugned that the Trial court has adopted a novel procedure in deciding the application filed under Order 39 Rule 1 and 2 as no reason has been specified in the said order. It appears that learned Judge has without going through the provisions of law has passed the order in a mechanical manner which is unknown to law.

Learned counsel for the respondent(s) appearing in FAO no. 36/2025, when asked to justify the order, could not say anything about the same. Admittedly, counsel has also submitted that the order has been passed without adopting the procedure required to have been adopted by the Trial court in deciding the application. Therefore, the aforesaid order being bad in law, is set aside.

In view of above, the Trial court shall here the parties afresh in an application filed under Order 39 Rule 1 and 2 and decide the same strictly in accordance with the provisions of law.

Since the aforesaid impugned order has been set aside, the interim directions shall stand restored.

In view of the fact that the appeal filed by the petitioner challenging the order dated 15.07.2025 has been allowed, therefore, the petition bearing **CM(M) no. 540/2025**, shall also stand disposed of in terms of the aforesaid order.

CCP(S) 378/2025

In view of the disposal of the main petition, the proceedings in the contempt petition does not survive and is accordingly, **closed**.

(VINOD CHATTERJI KOUL)
JUDGE

Srinagar
23.12.2025.
"Imtiyaz"

